

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,
Plaintiff,
v.
MCTAGGART, *et al.*,
Defendants.

Case No. 1:22-cv-01421-NODJ-BAM (PC)
ORDER GRANTING PLAINTIFF'S MOTION
TO SUBSTITUTE MICHAEL TILLERY FOR
AND INSTEAD OF DEFENDANT TILLERY
(ECF No. 38)

Plaintiff Barry Louis Lamon ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was removed from Kings County Superior Court on November 3, 2022. (ECF No. 1.) The second amended complaint has not yet been screened.

On October 11, 2023, Defendants filed a status report indicating that Defendant Tillery's next of kin, Michael Tillery, was personally served with a notice of suggestion of death of Defendant Tillery on October 3, 2023, in accordance with Federal Rule of Civil Procedure 4(e)(2). (ECF No. 33.) Finding that the ninety-day period for filing a motion for substitution of Defendant Tillery, pursuant to Federal Rule of Civil Procedure 25, was triggered as of October 11, 2023, the Court directed the parties to file a motion for substitution of Defendant Tillery, and to personally serve the motion on the non-party successor or representative, on or before January 9, 2024. (ECF No. 34.)

1 The Court granted Plaintiff's renewed motion for substitution and motion requesting
2 personal service of the motion for substitution by the United States Marshals Service ("USMS").
3 (ECF Nos. 38–40.) On December 20, 2023, the USMS filed a USM-285 indicating that personal
4 service of the motion to substitute had been executed on Michael Tillery on December 19, 2023.
5 (ECF No. 41.) Any opposition to Plaintiff's motion to substitute was therefore due on or before
6 January 9, 2024.

7 Having received no opposition or response to Plaintiff's motion to substitute from any
8 party, and finding that the motion to substitute was properly served on Defendant Tillery's
9 successor-in-interest, the motion to substitute is granted. Michael Tillery is substituted for
10 Defendant D. Tillery.¹

11 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 12 1. Plaintiff's motion to substitute Michael Tillery for and instead of Defendant Tillery, (ECF
13 No. 38), is GRANTED;
- 14 2. The Clerk of the Court is DIRECTED to substitute Michael Tillery for Defendant D.
15 Tillery in this action; and
- 16 3. Plaintiff's second amended complaint will be screened in due course.

17 IT IS SO ORDERED.

19 Dated: January 19, 2024

20 /s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE

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26 ¹ As a party substituted under Rule 25 "steps into the same position as the original party," *Hilao*
27 *v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996), and Defendant D. Tillery was represented
28 by counsel who receives electronic service, personal service on Michael Tillery is no longer
 necessary. If for any reason counsel from the Office of the Attorney General will not be
 representing Michael Tillery in this action, counsel should promptly so inform the Court.